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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/009,455	01/20/1998	RANDELL L. MILLS	9113-20US	7444

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EXAMINER

TSANG FOSTER, SUSY N

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/009,455

Applicant(s)

MILLS, RANDELL L.

Examiner

Susy N. Tsang-Foster

Art Unit

1745

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 05 August 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See Continuation Sheet.

12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 20050805

13. ☐ Other: _____.

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Continuation of 11. does NOT place the application in condition for allowance because: See Examiner's evidence, arguments and Appendices in all the previous Office Actions. The previous final Office Action and all arguments, evidence and appendices contained or referenced therein are incorporated in their entirety by reference in this response. Applicant's present response filed on 8/5/2005 is not new evidence which have been addressed by the Examiner in the previous Office Actions. Contrary to applicant's assertions on page 157, applicant's lower-energy hydrogen has not gained acceptance in the scientific community. Acceptance of applicant's lower-energy hydrogen is contrary to quantum mechanics which has been conventionally accepted by the scientific community. For the reasons of record, applicant's theory that predicts lower-energy hydrogen has been shown to be fundamentally flawed, both physically and mathematically.

On pages 162-163 in the appendix filed on 8/5/2005, applicant states:

"Applicant understands SQM very well to the point that he appreciates and admits that it can not possibly be correct...Applicant was fortunate in that he had a quantum mechanics professor who was honest and taught 'SQM should be used as a tool, it is the best we can do at the moment, but it has many problems including the fact that it is not based on physical laws learned in prior courses and is not easily interpreted in terms of physical reality.' Little did he know at the time that one of his students would take an initiative to his prediction that 'some day someone will replace it with the correct theory of atomic physics.'"

For clarification, SQM and CM appear to applicant's notation for standard quantum mechanics which has been conventionally accepted by the scientific community to explain all the possible energy states of the hydrogen atom. On the other hand, CQM, appears to stand for classical quantum mechanics advanced by applicant who alleges is based on first principles that predicts fractional lower energy states for the hydrogen atom and these results predicted by applicant's theory have been refuted by the Examiner in the previous Office Actions. From applicant's statements of record, he misunderstands conventional quantum mechanics for the reasons of record given by the Examiner. Applicant's lower energy states having fractional quantum numbers for the hydrogen atom are contrary to the conventionally accepted energy states of the hydrogen atom having positive integer quantum numbers as predicted by quantum mechanics that has been successfully verified by decades of independent, reproducible experimental results for reasons given in the previous Office Actions of record and Appendices therein.

Applicant made the following statements on page 126 of the most recent response:

"The Committee's 'allowance is not an option' policy has been further advanced by another Examiner-in-name-only, Susy N. Tsang-Foster. In those cases in which her name appears, Examiner Tsang-Foster basically admits to the Committee's continued refusal to grant Applicant a fair hearing on the mountain of scientific evidence, submitted at its request, proving the existence of lower energy states of hydrogen. (See, for example, the May 12, 2005 Advisory Action issued in U.S. App'n Ser. No 09/669,877.)"

In response, the Office Action mailed on May 12, 2005 in U.S. App'n Ser. 09/669,877 does not support applicant's statements cited above.

Applicant is reminded of 37 CFR 1.3, "Business to be conducted with decorum and courtesy."

Claims 1-281 remain rejected for the reasons of record.

The IDS filed on 8/5/2005 was not timely filed. There is no rule 97(c) which applicant cites to support entry of this information disclosure statement. The only Rule that appears relevant is Rule 1.97 and the relevant parts of that rule state:

- (c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, provided that the information disclosure statement is filed before the mailing date of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application, and it is accompanied by one of:
 - (1) The statement specified in paragraph (e) of this section; or
 - (2) The fee set forth in § 1.17(p).
- (d) An information disclosure statement shall be considered by the Office if filed by the applicant after the period specified in paragraph (c) of this section, provided that the information disclosure statement is filed on or before payment of the issue fee and is accompanied by:
 - (1) The statement specified in paragraph (e) of this section; and
 - (2) The fee set forth in § 1.17(p).
- (e) A statement under this section must state either:
 - (1) That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or
 - (2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement.

The IDS filed on 8/5/2005 after the final office action is not entitled for consideration since prosecution on the merits is closed and the documents cited in the IDS were not first cited in a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. Furthermore, copies of each of the cited references must be provided if the reference has not been previously cited in the instant application. See 37 CFR 1.97.


Any inquiry concerning this communication or earlier communications should be directed to examiner Susy Tsang-Foster, Ph.D., whose telephone number is

(571) 272-1293. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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SUSYTSANG-FOSTER
PRIMARY EXAMINER